



**ASSEMBLY SUBSTITUTE AMENDMENT 3,
TO 2011 ASSEMBLY BILL 69**

1 **AN ACT** *to create* 895.62 and 939.48 (1m) of the statutes; **relating to:**
2 self-defense.

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 895.62 of the statutes is created to read:

4 **895.62 Use of force in response to unlawful and forcible entry into a**
5 **dwelling, motor vehicle, or place of business; civil liability immunity. (1)**

6 In this section:

7 (a) “Actor” means a person who uses force that is intended or likely to cause
8 death or great bodily harm to another person.

9 (b) “Dwelling” has the meaning given in s. 895.07 (1) (h).

1 (c) “Place of business” means a business that the actor owns or operates.

2 **(2)** Except as provided in sub. (4), an actor is immune from civil liability arising
3 out of his or her use of force that is intended or likely to cause death or great bodily
4 harm if the actor reasonably believed that the force was necessary to prevent
5 imminent death or bodily harm to himself or herself or to another person and either
6 of the following applies:

7 (a) The person against whom the force was used was in the process of
8 unlawfully and forcibly entering the actor’s dwelling, motor vehicle, or place of
9 business, the actor was on his or her property or present in the dwelling, motor
10 vehicle, or place of business, and the actor knew or had reason to believe that an
11 unlawful and forcible entry was occurring.

12 (b) The person against whom the force was used was in the actor’s dwelling,
13 motor vehicle, or place of business after unlawfully and forcibly entering it, the actor
14 was present in the dwelling, motor vehicle, or place of business, and the actor knew
15 or had reason to believe that the person had unlawfully and forcibly entered the
16 dwelling, motor vehicle, or place of business.

17 **(3)** If sub. (2) (a) or (b) applies, the finder of fact may not consider whether the
18 actor had an opportunity to flee or retreat before he or she used force and the actor
19 is presumed to have reasonably believed that the force was necessary to prevent
20 imminent death or bodily harm to himself or herself or to another person.

21 **(4)** The presumption described in sub. (3) does not apply if any of the following
22 are true:

23 (a) The actor was engaged in a criminal activity or was using his or her
24 dwelling, motor vehicle, or place of business to further a criminal activity at the time
25 he or she used the force described in sub. (2).

1 (b) The person against whom the force was used was a public safety worker, as
2 defined in s. 941.375 (1) (b), who entered or attempted to enter the actor's dwelling,
3 motor vehicle, or place of business in the performance of his or her official duties.
4 This paragraph applies only if at least one of the following applies:

5 1. The public safety worker identified himself or herself to the actor before the
6 force described in sub. (2) was used by the actor.

7 2. The actor knew or reasonably should have known that the person entering
8 or attempting to enter his or her dwelling, motor vehicle, or place of business was a
9 public safety worker.

10 (5) In any civil action, if a court finds that a person is immune from civil liability
11 under sub. (2), the court shall award the person reasonable attorney fees, costs,
12 compensation for loss of income, and other costs of the litigation reasonably incurred
13 by the person.

14 (6) Nothing in this section may be construed to limit or impair any defense to
15 civil or criminal liability otherwise available.

16 **SECTION 2.** 939.48 (1m) of the statutes is created to read:

17 939.48 (1m) (a) In this subsection:

18 1. "Dwelling" has the meaning given in s. 895.07 (1) (h).

19 2. "Place of business" means a business that the actor owns or operates.

20 (ar) If an actor intentionally used force that was intended or likely to cause
21 death or great bodily harm, the court may not consider whether the actor had an
22 opportunity to flee or retreat before he or she used force and shall presume that the
23 actor reasonably believed that the force was necessary to prevent imminent death
24 or great bodily harm to himself or herself if the actor makes such a claim under sub.
25 (1) and either of the following applies:

1 1. The person against whom the force was used was in the process of unlawfully
2 and forcibly entering the actor’s dwelling, motor vehicle, or place of business, the
3 actor was present in the dwelling, motor vehicle, or place of business, and the actor
4 knew or reasonably believed that an unlawful and forcible entry was occurring.

5 2. The person against whom the force was used was in the actor’s dwelling,
6 motor vehicle, or place of business after unlawfully and forcibly entering it, the actor
7 was present in the dwelling, motor vehicle, or place of business, and the actor knew
8 or reasonably believed that the person had unlawfully and forcibly entered the
9 dwelling, motor vehicle, or place of business.

10 (b) The presumption described in par. (ar) does not apply if any of the following
11 applies:

12 1. The actor was engaged in a criminal activity or was using his or her dwelling,
13 motor vehicle, or place of business to further a criminal activity at the time.

14 2. The person against whom the force was used was a public safety worker, as
15 defined in s. 941.375 (1) (b), who entered or attempted to enter the actor’s dwelling,
16 motor vehicle, or place of business in the performance of his or her official duties.
17 This subdivision applies only if at least one of the following applies:

18 a. The public safety worker identified himself or herself to the actor before the
19 force described in par. (ar) was used by the actor.

20 b. The actor knew or reasonably should have known that the person entering
21 or attempting to enter his or her dwelling, motor vehicle, or place of business was a
22 public safety worker.

23 **SECTION 3. Initial applicability.**

